UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1999/15/Add.1
27 January 1999

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Provisional agenda item 6

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Report by Mr. Glele-Ahanhanzo, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted pursuant to Commission on Human Rights resolution 1998/26

Addendum

Mission to South Africa (24 February - 5 March 1998)

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	3
I. SOCIO-ECONOMIC AND POLITICAL SITUATION IN SOUTH AFRICA	3 - 15	3
A. Historical survey	3 - 6	3
B. Socio-political survey	7 - 10	4
C. Human rights survey	11 - 15	5
II. IMPLEMENTATION OF POST-APARTHEID REFORMS	16 - 46	6
A. The Reforms	17 - 39	6
B. Opposition to the changes	40 - 46	12

GE.99-10391 (EXT)

CONTENTS (continued)

		Paragraphs	Page
III.	THE RISE IN XENOPHOBIA	47 - 77	13
	A. Migratory pressures on South Africa and the refugee influx	47 - 53	13
	B. Immigration control: rupture or continuity ?	54 - 66	15
	C. A xenophobia towards Blacks	67 - 77	18
IV.	MEASURES TAKEN BY THE GOVERNMENT	78 - 80	21
V.	ACTION BY CIVIL SOCIETY	81 - 85	22
VI.	CONCLUSIONS AND RECOMMENDATIONS	86 - 90	23
	A. Conclusions	86 - 89	23
	B. Recommendations	90	24
Annex			
	Programme of the mission		27

Introduction

1. In pursuance of the mandate conferred on him by Commission on Human Rights resolutions 1993/20 and 1996/21, the Special Rapporteur carried out a mission to South Africa from 24 February to 5 March 1998 in response to allegations concerning a rise in xenophobia and mistreatment of migrants in that country 1/. He also used his stay to examine the progress of the post-apartheid reforms and the obstacles confronting the rapid transformation of South African society into one that is democratic and non racist.

2. The Special Rapporteur visited Pretoria, Cape Town, Johannesburg and Durban where he met representatives of government, the Constitutional Court, the Human Rights Commission, municipal councils, academic institutions and various non-governmental organizations. Among those he consulted were Mr Dullah Omar, Minister of Justice, Ms Manto Tshabalala-Msimang, Deputy Minister of Justice, Mr F. S Mufamadi, Minister of Safety and Security, Mr Abdul S. Minty, Deputy Director General for Multilateral Affairs at the Department of Foreign Affairs, and Mr. A. Chaskalson, President of the Constitutional Court. The Special Rapporteur also had a working meeting with representatives of various UN organizations based in Pretoria (UNHCR, UNDP, IMO, UNIC). A complete list of those consulted by the Special Rapporteur is in the detailed mission programme attached to this report.

I. THE SOCIO-ECONOMIC AND POLITICAL SITUATION IN SOUTH AFRICA

A. Historical survey

3. After more than forty-five years of apartheid, in 1994 the oppressed peoples of South Africa achieved internal sovereignty. As an aid to clearer understanding of the scale of the reforms being tackled by the government and the problems confronting it, there follows a brief reminder of the nature of the racist and discriminatory apartheid regime and its effects on South African society.

4. Apartheid was introduced in 1948 by the National Party as a system of racial segregation designed to maintain a situation of inequality between the Whites and the other ethnic and racial groups living in South Africa, in the economic, social, political and cultural spheres. A battery of laws was adopted in order to separate these groups from each other and to establish a structure enabling economic and human resources to be exploited to the advantage of the Whites :

1/ A/51/301, para. 36; Hennie Kotze and Lloyd Hill, "Emergent Migration Policy in a Democratic South Africa", International Migration, Quarterly Review, Vol. 35, No 1, 1997, pp 5-36; Human Rights Watch/Africa, "The Human Rights of Undocumented Migrants, Asylum Seekers and Refugees in South Africa", submission to the Green Paper Task Group, 11 April 1997 (www.polity.org.za:80/govdocs); Steven Friedman, "Migration Policy, Human Rights and the Constitution", Centre for Policy Studies (www.polity.org.za:80/govdocs).

a) The *Population Registration Act 1950* categorized people at birth into one of four official racial groups (White, Coloured, Indian, African);

b) The *Group Areas Act 1950* imposed separate residential environments for each group. In addition, under the *Black (Urban Areas) Consolidation Act 1945*, Blacks were forbidden to stay beyond a certain time in White-occupied areas and were required to carry a document (Pass) at all times stating their places of residence and work. Since 1913 Blacks had already been confined to 7.3% of South African territory by the *Native Land Act 1913*;

c) The *Prohibition of Mixed Marriage Act 1949* and the *Immorality Amendment Act 1950* forbade interracial marriages and sexual relations between persons of different race;

5. The system was sustained through oppression and the constant use of violence against Blacks, who suffered the greatest discrimination although they comprised the largest group (over 70 % of the population). The Blacks were relegated to the outskirts of towns, in *townships* and in *bantoustans* 2/, where they lived in makeshift constructions without running water, electricity and basic sanitation. They were reduced to a cheap labour force, working as domestic servants, in mining and in agriculture. They received a rudimentary and poor quality education. A study published in 1987 estimated that public spending for each black child was less than a sixth of that for a white child 3/.

6. The new South African authorities thus inherited a country characterised by economic, social, political and cultural imbalance, and by a culture of violence stemming from its past. The partitioning of the territory and of human relations also left the country with the closed mentalities which the government is now trying to change.

B. Socio-political survey

7. The new South Africa has arisen after a long struggle by its oppressed peoples, beginning in 1912 with the birth of the African National Congress (ANC) and ending, with active assistance from the United Nations and the OAU, in negotiations with the White authorities that started in 1993 in the context of the Convention for a Democratic South Africa (CODESA). In 1994, a provisional constitution establishing a democratic and non-racist South Africa was adopted and multiparty elections were held.

8. Those elections brought to power the African National Congress (252 of the 400 parliamentary seats), whose political programme underpins the changes that are taking place. The ANC holds power in seven out of the nine provinces (Eastern Cape, Free State, Gauteng, Mpumalanga, North West, Northern Cape,

---

2/ Supposedly autonomous territories that were in fact reserves to which a dozen or so ethnic African groups were banished, from 1951, in order to keep them away from urban centres inhabited by Whites.

3/ South African Institute of Race Relations, Social and Economic Update, 8 November 1987.

Northern Province). The National Party, which founded and implemented apartheid, won the elections in Western Cape, and the Inkhata Freedom Party those in Kwazulu Natal.

9. The permanent Constitution signed by President Mandela in 1996 established a unitary State divided into nine provinces (Eastern Cape, Free State, Gauteng, Kwazulu Natal, Mpumalanga, Northern Cape, Northern Province and Western Cape), each having a Provincial Assembly and an Executive Council headed by a Premier. The President of the Republic, the supreme State authority, is elected by Parliament.

10. Today the population is divided into Blacks and Whites; this is a political rather than racial distinction, the term "Black" covering those populations previously subjugated, namely the Africans (70% of a population estimated to be 40 million by the 1997 census), Indians and Coloureds, although not all the members of the last two groups accept this classification.

C. Human rights survey

11. Chapter 2 of the 1996 Constitution comprises a bill of rights which guarantees all people universally recognized fundamental rights and freedoms, including the rights to equality, life, freedom of religion, belief and opinion, freedom of expression and freedom of association. The Constitution also guarantees most economic, social and cultural rights, including the rights to property, housing, health and education, and the right to use the language and participate in the cultural life of their choice. A Human Rights Commission has been set up by constitutional law in order to promote human rights and to supervise implementation of the bill. *(Human Rights Commission Act No. 54 of 1994)*

12. Three other institutions protect human rights in particular fields, namely the *Public Protector*, the *Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities*, and the *Commission on Gender Equality*. The latter plays an active role in tackling domestic violence.

13. The Public Protector, a type of mediator who replaced the Ombudsman in October 1995, is represented in the nine provinces. He intervenes in cases of infringement of public employees' rights or of corruption in public administration. With a staff of 27, he is based in Pretoria, but conducts investigations in the field with police assistance. He submits his recommendations to the sphere of government concerned, which generally follows them. Any person may refer a matter to the Public Protector, who will initiate an investigation if he finds the complaint justified. The Public Protector also works closely with the *Independent Complaints Directorate*, which passes on to him complaints received against the police.

14. The Special Rapporteur had a working meeting with the Chairman of the National Coalition for Gay and Lesbian Equality, who informed him of the problems and sexually discriminatory practices encountered by his members (at school, at work, refusal of medical attention), whether South Africans or immigrants from Namibia, Zimbabwe, Botswana and Zaire. Those with whom the Special Rapporteur spoke informed him that negotiations were now under way with Parliament and the Government aimed at repealing the anti-homosexual legislation

dating from the apartheid era; they welcome the legal verdicts which have already been made in support of the equality of men and women, and the sympathetic hearing they are receiving from Christian churches. They deplore the discrimination being suffered by Blacks within the Coalition and say they are determined to work towards equality between Blacks and Whites in the Coalition.

15. Since its return to the community of nations, South Africa has begun the process of ratifying international and regional instruments on the protection of human rights. The government has submitted the international conventions on human rights to Parliament for ratification; the legislation to implement them is in preparation. In collaboration with the Ministry of Education, provision is being made to introduce human rights programmes to the school and university curricula.

II. IMPLEMENTATION OF POST-APARTHEID REFORMS

16. Since the 1994 elections, sweeping political changes have occurred. This is not the case in other sectors such as the economy, education and social affairs. The general election was only the starting point, according to the Minister of Justice. South African society is still riddled with racial divisions. Some people are still excluded, which explains the need to effect economic, social and cultural changes. Radical reforms are taking place in political institutions, the army, the police and the judiciary.

A. The reforms

1. Fostering unity and reconciliation

17. The first task of the democratically elected Government was to foster unity and reconciliation among all sections of the South African population. Hence the establishment of the Truth and Reconciliation Commission: it has no legal function, but its main purpose is to reveal the causes, nature and extent of the human rights violations committed under apartheid. It also has the task of establishing the fate of the victims and survivors of human rights abuses, rehabilitating them or restoring their dignity, and compensating them. Lastly, the Commission can grant amnesty to perpetrators of human rights violations who agree to give evidence before it.

18. The Commission has devised a rehabilitation and compensation programme for the victims and survivors of the wide-ranging human rights abuses committed between 1960 and 1994. The five-part scheme has been submitted to the government and to Parliament for discussion and approval 4/ :

(a) Individual reparation grants, which will be part of an individual financial grant scheme;

(b) Symbolic reparation, which will help communities to commemorate together "the pain and victories of the past";

4/ See Truth Talk, The Official Newsletter of the Truth and Reconciliation Commission, Vol. 3, No. 1, November 1997.

(c) Community rehabilitation programmes;

(d) Institutional reform, designed to prevent human rights abuses from happening again; and

(e) Urgent interim reparations.

19. The Truth and Reconciliation proposals were developed around several principles, which were that reparations should be development-centred, simple and efficient, appropriate in cultural terms, community based, and must promote healing and reconciliation as well as capacity-building in communities.

20. Individual reparation will take the form of a scheme under which each victim of a gross human rights violation will receive an individual annual financial grant for a period of six years. Most of the value of the grant would acknowledge the suffering caused by the gross violation of human rights experienced by a victim.

21. Symbolic reparation conjures up images of monuments, but could take the form of a variety of other measures. It may include the erection of memorials and monuments on both national and local levels, as well as the identification of a "Day of Remembrance". On a more individual level, symbolic reparation could also mean assistance to individuals in obtaining death certificates and finalizing outstanding legal matters, or clearing their names from criminal records. Victims may be eligible to have relatives exhumed or buried, or in some cases to receive a headstone or tombstone.

22. The Commission has further recommended that streets and community facilities should be renamed to reflect and honour individuals or events in communities. It identified a need for culturally appropriate ceremonies. Community rehabilitation programmes hinge on the main policy principle that reparation should be development centred, to empower individuals and communities to take control of their own lives. It therefore implies the provision of sufficient knowledge and information about available resources to victims through a participatory process. Among the categories of community rehabilitation recommended are health care, mental health care, education and housing. A programme to demilitarise the youth who have come to accept violence as a way of resolving conflict is included under emotional health care, as is a multi-disciplinary programme involving all ministries and departments to resettle the thousands of "internal" refugees driven from their homes due to political conflict.

23. Institutional reform overlaps with the broader aims of the Commission, including measures designed to prevent the recurrence of human rights abuses, for implementation in a wide range of sectors such as the judiciary, media, security forces and business; this reform should contribute to the development of a human rights culture in South Africa. The urgent interim reparation component of the Commission's reparation and rehabilitation programme is aimed at providing limited financial resources to people in urgent need to enable them to access appropriate services and facilities.

24. The Commission has received around 15 000 statements from victims of human rights abuses or their parents, and 7 000 applications for amnesty. It has heard

over 1 000 people implicated in cases of large-scale human rights abuse, ranging from maltreatment to murder, and including torture and abduction. Although some people are inclined to denigrate the Commission and to describe it as a "circus" 5/, this *ad hoc* institution plays a vital conciliating role, defusing resentments and making a clean break with the past so that fraternal relations can be established between the different elements of South African society.

25. A further aspect of the policy of unity and reconciliation has been to entrust the media with the task of broadcasting a message of unity and conciliation. Thus, the South African Broadcasting Corporation has produced a slogan which is also a leitmotif :"Simunye-We are One". All the races living in South Africa now appear on its television screens, reflecting the concept of *"Rainbow Nation"* created by Archbishop Desmond Tutu.

26. The effects of the policy of unity and reconciliation on South African society have been mixed. The Commission has not received cooperation from the Inkatha Freedom Party which accuses it of conducting a "witch-hunt" among its members. None of this party's leaders has requested amnesty for his actions, despite its involvement in political violence and the assassination of anti-apartheid militants. Likewise, the National Party ceased cooperating with the Commission after former President of the Republic F.W. de Klerk was severely criticised for refusing to accept his party's responsibility for the human rights abuses which occurred during the apartheid era. This party has refused to give evidence about the system of repression (the *National Security Management System*) established secretly during the early years of apartheid to smash the ANC and the opponents of apartheid. Moreover, the white judiciary and businessmen on whom apartheid depended for its continued existence have also refused to collaborate with the Truth and Reconciliation Commission.

27. Nevertheless, the Commission - which has completed its work and submitted its report on 29 October 1998 - has partly satisfied South Africans' desire for the truth and their resolve to understand apartheid from inside, just as it has also come up to expectations regarding the nature of the offensive waged by the anti-apartheid forces and the errors they committed. During its sessions, the interaction between victims and perpetrators of human rights abuses, although painful, helped to calm heads and to dispel the perception that the perpetrators were exempt from punishment, through a process of catharsis. This exchange, without justifying their actions, humanised some of those who committed human rights abuses, giving them the opportunity to appear as hostages of a system they could not control and to obtain the direct forgiveness of survivors, victims and parents of victims. Thus, South Africans learned from the lips of Dr Daan Goosen, the leader of the project, that the former Government had initiated a scientific research programme aimed at developing a bacterium that would kill only Blacks or make them sterile. Furthermore, the dignity of victims has been restored and the compensation they will receive, even if it cannot make up for the disappearance of a loved one and the after-effects of maltreatment,

---

5/ The former President of the Republic, Pieter Botha, invited to testify to the Commission, treated it as a "circus" and refused to appear before it. The Commission then lodged a complaint against Mr. Botha for contempt of court.

may appease the frustrations caused by the amnesties granted to the perpetrators.

28. The Commission has tried to make clear that the fostering of unity and reconciliation is a collective undertaking which must be tackled by all South Africans regardless of any distinction, thus enabling South Africa to proceed slowly towards a common destiny enabling it to escape from the demons of the past.

2. Reconstruction and Development Programme

29. The reconstruction and development programme is the instrument for the transformation of South African society. A governmental programme devised by the ANC and its partners, its objective is to reform economic and social conditions for the majority of South Africans left wanting by the apartheid regime. It will attempt to eliminate from all sectors of the economy and society (employment, industry, agriculture, culture, health, security) the divisions and disparities bequeathed by apartheid.

30. The Programme is structured around five main sub-programmes : meeting basic needs; human resources development, construction of the economy, democratisation of the State and society, and implementation of the actual reconstruction programme.

31. The interest of the Programme for this study is that it focuses on the implementation of economic, social and cultural rights as well as on civil and political rights. In that regard, the government considers that its first priority is "to begin to meet the basic needs of people, i.e. to provide them with jobs, land, housing, water, electricity, telecommunications, transport, a clean and healthy environment, nutrition, health care and social welfare. This includes programmes to redistribute a substantial amount of land to landless people, build over one million houses, provide clean water and sanitation to all, electrify 2.5 million new homes and provide access for all to affordable health care and telecommunications."

32. The development of human resources "deals with education from primary to tertiary level, from child care to advanced scientific and technological training. It focuses on young children, students and adults. It deals with training in formal institutions and at the workplace."

33. Concerning civil and political rights, the government believes that implementation of the programme must involve all levels of South African society. This aspect of the reforms determines a new role "under the Constitution and Bill of Rights for national, provincial and local government, the administration of justice, the public sector, parastatals, the police and security forces, social movements and NGOs." It sets up a democratic information system aimed at promoting socio-economic development. The active role being played by civil society in the establishment of democracy in South Africa is discussed below.

34. The Special Rapporteur was able to see for himself how the programme is being implemented in education, at municipal level, in the army, in the police and in the legal system :

Education

35. A school programme known as Curriculum 2000 will shortly be introduced with a view to purging teaching material of the falsehoods proclaimed by apartheid. Multilingualism will be encouraged through the eleven official national languages (Afrikaans, English, isiNdebele, Sepedi, siSwati, Sesotho, Setswana, Tshivenda, Xitsonga, isiXhosa and isiZulu), which will be taught on equal terms.

Municipal councils

36. These bodies are increasingly coming to reflect the racial and ethnic composition of the country. Several municipal councils, the exception being Cape Town, are controlled by a black majority which collaborates with municipal councillors from White-dominated parties such as the National Party. In Pretoria's municipal council, Blacks and Whites from the ANC demonstrate through their work to integrate the various communities their desire to overcome racial barriers. Development programmes for the surrounding townships have already been formulated. Through the cooperation which has been established between Whites and Blacks, Pretoria is seeking to become a showcase for the new South Africa.

The Army

37. Renamed the South African National Defence Force (SANDF) in place of the *South African Defense Force*, the army previously dedicated to destabilizing South Africa's neighbouring States and to launching attacks against the freedom fighters of the ANC, the PAC and other parties is now attempting to integrate the various armed groups which fought against apartheid into a single transracial body. The government's objective is to destroy the army's symbolic identity as an essential pillar of apartheid and turn it into a melting pot of national unity and a law-abiding democratic institution. A white paper entitled *Defence in Democracy: White Paper on National Defence for the RSA* spells out the army's new role. It will apply within its ranks the Government's policy of *equal opportunity* and *positive action* which calls for non-discrimination with regard to racial origin, sexual or religious persuasion, or for other reasons. A civic training programme, centred mainly on essential aspects of democracy, the South African Constitution, the Human Rights Charter, international humanitarian law, cultural diversity and military ethics, has been published in a manual entitled *South African National Defense Force Civic Education Guidelines* and is being implemented. It is complemented by a military training programme intended to provide, *inter alia*, the opportunity for the most deserving soldiers from the freedom movements to gain promotion. Currently, the 105 040 soldiers who make up 80.50 % of the South African army are distributed as shown in the table below, which was provided for the Special Rapporteur by the South African military authorities.

Distribution per race/gender
(15 February 1998)

	Male	%	Female	%	Total
Whites	27,989	21.45%	13,884	10.64%	32.09%
Indians/Asians	3,563	2.73%	869	0.67%	3.40%
Coloureds	8,383	6.42%	1,955	1.50%	7.92%
Africans/Blacks	65,105	49.89%	8,741	6.70%	56.59%
Total	105,040	80.50%	25,449	19.50%	100.00%

Distribution of commissioned officers per race/gender for the total of the South African Professional Soldiers
(15 February 1998)

	Male	%	Female	%	Total
Whites	6,880	5.27%	1,538	1.18%	6.45%
Indians/Asians	742	0.57%	127	0.10%	0.67%
Coloureds	463	0.35%	63	0.05%	0.40%
Africans/Blacks	2,486	1.91%	265	0.20%	2.11%
Total	10,571	8.10%	1,993	1.53%	9.63%

The efforts to improve the cultural and racial balance among army officers are the responsibility of Major General Sedibe, a black woman from the ANC. Recently, a Black was appointed as the army's Chief of Staff.

The Police

38. Those interviewed by the Special Rapporteur acknowledge that the police sometimes resort to violence and brutality, especially towards Blacks. In order to put a stop to this kind of behaviour, the *Community of Police policy*, a police department with a community support role has been set up. There is also an *Independent Complaints Directorate* to which complaints about police behaviour can be addressed. A programme of police reform has been devised and implemented in collaboration with Belgium. As with the army, a scheme based on equal opportunity and positive action is being implemented with a view to achieving a hierarchical structure representative of the South African population by the year 2000, with levels of 40 % and 10 % respectively for women and the disabled. One of the first steps was to end the system of separate toilets for black and white police officers. The use of racist terms such as "*kaffir*" has also been banned. Efforts are being made to raise black police officers' awareness of their rights, so that they do not behave like victims and learn instead how to react to persistent forms of racial discrimination. They also receive training aimed at ensuring that they do not end up confined to subordinate units while

their white colleagues staff the special units (scientific service, elite units…) and headquarters posts.

Justice

39. In order to protect the independence of the judiciary and the public's access to the judicial system, a Justice Commission has been established which will attempt to achieve a racial balance among magistrates. An educational programme has been developed at Pretoria Justice College with a view to reforming the judiciary's attitudes and thinking.

B. Opposition to the changes

40. The opposition takes the form of a veiled and persistent conspiracy: the efforts of the white minority to hold on to economic power and privileges, the sabotaging of governmental initiatives within the administrative system, negative propaganda in certain media regarding government activities, and attempts to depict the equal opportunity and affirmative action policies as racism and inverted racial discrimination.

41. At the 50th national conference of the African National Congress on 16 December 1997 at Mafikeng (Gauteng province), President Mandela strongly condemned a planned insurrection aimed at destabilising South Africa's young democracy. In his words, "various elements of the former ruling group have been working to establish a network which would launch or intensify a campaign of destabilisation, some of whose features would be: the weakening of the ANC and its allies; the use of crime to render the countryside ungovernable; the subversion of the economy; and the erosion of confidence both of our people and the rest of the world in our capacity both to govern and to achieve our goals of reconstruction and development."

42. The initiators of the planned insurrection were said to be already working actively in government and in other sectors of South African society. They had incited people to commit crimes and were attempting to weaken and paralyse the machinery of State through the theft of equipment weapons and ammunition; according to President Mandela, they had concealed documents of State importance and were in the process of setting up parallel structures, including an espionage system and armed forces. The most active tendencies in this movement were said to belong to neo-fascist groups with international contacts. Supporters of the former regime who oppose the measures being taken to redress past injustices argue that they constitute inverse racial discrimination which is incompatible with the Constitution; they protest that a brain drain is taking place and that an economic disaster will occur if the programmes of equal opportunity and affirmative action are implemented.

43. With competent officials in short supply, one of the major dilemmas facing the Government is that it must rely on an administration whose origins lie in the apartheid regime in order to implement a reform programme which that administration does not support. Some of those interviewed by the Special Rapporteur spoke of the recalcitrance of a part of the administration which still supports the beliefs of apartheid and hampers implementation of the reforms through delaying tactics.

44. The press remains largely in the hands of supporters of the former regime, with the exception of The Sowetan and Cape August, which are funded by Blacks and Coloureds. It is therefore inclined to criticize the government's actions rather than take an objective line. It often accuses members of the government and the ANC's provincial representatives of incompetence, nepotism and corruption.

45. Some previously White-dominated schools refuse to admit Blacks. One example is Vryburg school, about 200 km from Pretoria. Black children have been turned away when their parents wanted to enrol them "in case they lowered standards". Most of the parents association and the teachers are Whites, as is the chief of police, who makes little effort to apply the law.

46. In schools where instruction was given only in Afrikaans English and the African languages have been imposed by law owing to the refusal of Blacks to be taught in Afrikaans. However, Afrikaaners are reluctant to speak English or the African languages, with the result that two types of education can exist in the same building, one followed by Afrikaaners and the other by Blacks and the other racial groups. One tactic used by private Afrikaaner schools in order to exclude Blacks is to increase the fees considerably. Also, the argument of proximity to schools is used, whereby it is claimed that only those living within a certain radius relative to the school may be enrolled. Because of the policy of separating residential areas during the apartheid era, Blacks still live far away from the best schools located in the White suburbs. The Black population has expressed its outrage at this situation, and the government is trying to find a solution. True to the spirit of compromise which prevailed during the 1994 changeover, it refuses to use force and prefers to attempt dialogue with the community where problems arise.

III. THE RISE IN XENOPHOBIA

A. Migratory pressure on South Africa and the refugee influx

47. Since the 1994 elections, the issue of immigration has taken on alarming dimensions, the authorities having adopted a policy of criminalization and of systematically expelling "illegal" migrants or those without identity papers in response to growing xenophobia among the population. The most sought-after clandestine or illegal migrant is the "Nigerian", described as "French-speaking"; many Nigerians are accused of involvement in drug trafficking, organized crime and procuring.

48. The statistics on illegal immigration into South Africa are vague. Moderate sources speak of the presence of 500 000 clandestine foreigners, while the most alarmist put their number at 2 or even 11 million. The overestimation of the number of clandestine cases is probably due to the fact that migrants, who often trade in South Africa but do not wish to remain there permanently, are included in the figures. Another reason for the exaggerated numbers may be the tendency of some politicians to manipulate the statistics for electoral purposes, thereby playing on the fears of the population.

49. Most migrants enter the country for economic reasons. The majority of clandestine cases come from the 14 member states of the South African

Development Community (SADC) 6/. This may be explained by several factors: the long tradition (going back to the XIX century and strengthened during apartheid) of recruiting workers from Lesotho, Mozambique, Swaziland and Botswana for temporary work in the mines and in agriculture, particularly on farms in Mpumalanga and Northern Province. Many remain illegally in South Africa, either with the connivance of their employers or by extending their stay after their temporary work permit has expired. A second factor is the geographical proximity of the countries mentioned, which share borders with South Africa. Ultimately, the determining factor is probably the difficult economic situation in some neighbouring countries, particularly Mozambique.

50. South Africans represent one-third of the population of the SADC member states and have a gross domestic product three times greater than the combined gross national product of all the other Community states. For example, the ratio of per capita income in South Africa to that in Mozambique is 1 to 40. A further factor is that the establishment of democracy after the 1994 elections further enhanced the image of the new South Africa as a promised land in the minds of potential immigrants.

51. Beyond its sub-region, South Africa has recently recorded the arrival of migrants from central and western Africa (Nigerians and nationals of the Democratic Republic of Congo), and migrants from Eastern Europe (Bulgarians, Poles, Yugoslavs) and Asia (Chinese, Indians, Malays). South Africa is one of the favoured destinations for refugees from Angola, the Great Lakes region, the Democratic Republic of Congo, Somalia and Liberia.

52. Both the public and the administration are unable to distinguish between migrants, refugees, asylum seekers and students. No specific legislation exists on the right to asylum, even though South Africa has ratified the United Nations Convention relating to the Status of Refugees and that of the OAU. They are often likened to "economic refugees", and thus to migrants. Refugees therefore do not receive adequate protection and, just like migrants without papers, fall victim to xenophobic acts committed by the public; some have been attacked and killed.

53. Before the recent arrival of refugees, the South African Government had signed an agreement in 1993 with the United Nations High Commission for Refugees granting refugee status to 120 000 Mozambicans previously regarded as illegal migrants. However, the UNHCR's repatriation programme will return only 30 000 Mozambicans to their homes, the others preferring to remain in South Africa so as not to have to face the difficult economic and social situation in their country.

6/ Angola, Botswana, Congo (Dem. Rep.), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

B. Immigration control : rupture or continuity?

1. South African immigration policy

54. South Africa's immigration policy is geared to control and expulsion rather than to a regulation of the movement of people that takes account of its and its SADEC partners' socio-economic interests together with the geopolitical and economic realities dictated by its integration into the world economy. Its policy may be summarized thus: the Constitution gives South Africans the right to earn their living and access to health care, education, housing, etc; the presence on South African soil of foreigners with no legal status infringes (or limits) those rights. Immigration controls, by shielding South Africans from any competition for work and social services, thus protect their constitutional rights.

55. Two laws underpin current immigration policy:

(a) The *South African Citizenship Act* of 1995, which defines three categories for acquiring South African citizenship (birth, descent and naturalization);

(b) The *Aliens Control Act* of 1991: until 1986, under the apartheid regime racial origin governed the granting of citizen or permanent resident status in South Africa. Those accorded permanent residence or citizenship had to be "readily assimilable by the white inhabitants". In 1986, this racist clause was deleted by legislation. The *Aliens Control Act* distinguishes between three categories of foreigner : those in possession of legal entry documents, undocumented persons or illegal entrants, and refugees.

The 1991 law granted the administration extended powers in respect of the entry and exit of foreigners, without providing adequate legal guarantees; it was thus amended in 1995. There are some regrets that the Government did not overhaul the immigration legislation completely so as to take better account of the regional economic and social conditions which have given rise to the population movements.

56. Moreover, the amended law perpetuates the criminalization and excessive repression of illegal immigration. The *Aliens Control Amendment Act* of 1995 makes provision for general measures aimed at strengthening the capacity of the legal system and the Ministry of the Interior to tackle illegal immigration. One clause (Section 32 (e)) also gives the Ministry of the Interior the power to take steps to ensure that optimal use has been made of the local workforce before a work permit is granted. This clause clearly shows the government's commitment to a self-sufficient position that favours its own citizens exclusively, a stance which, according to some of those interviewed, contradicts the country's involvement in the development of the sub-region made up by the SADC States.

57. Nevertheless, two positive measures taken by the South African state must be recognized : the first, granted by President Mandela in 1995, concerns 50 000 illegal miners from two states that are highly dependent on South Africa: Lesotho and Mozambique. The second amnesty, decreed in 1996, concerns illegal persons from the SADC countries and Angola; those who entered South Africa

before 1 July 1991, have committed no crime, have a job (including those working for themselves) and are married to a South African citizen will receive their papers. Given the small number of people concerned (limited geographical area, numerous conditions, difficulty in proving that conditions have been met), this amnesty has had only limited effect to date 7/.

2. Immigration control

58. Illegal persons represent probably (though it is difficult to keep records) the majority of the immigrants in South Africa. Stigmatized in the *Aliens Control Act* as "prohibited persons" and criminalized by the law, they are regarded as undesirables, and therefore as liable to detention and repatriation. This process (arrest, detention, deportation) has frequently been denounced as being open to multiple abuse on the part of the South African authorities.

59. The introduction of stricter immigration legislation goes in tandem with the strengthening of police controls (the number of police units whose job is to search for illegal persons increased from 3 to 14 between 1994 and 1995). Raids have become much more frequent in the urban communities suspected of harbouring illegal foreigners. Some reports say that procedures are not being followed during arrests of suspected illegal foreigners. Others have described how the "immigrant hunts" provide some police officers with the opportunity to continue the violent behaviour and discriminatory practices made routine during apartheid. That violence is particularly evident during raids in which large numbers of more or less arbitrary and often violent arrests are made, often on the basis of "being the wrong sort" 8/, and the burden of proof of legal status rests with the accused: many foreigners, even South Africans, have spent months in prison like this, as their status can sometimes be difficult to determine.

3. Detention

60. Within the framework of the *Aliens Control Act* a person suspected of being in an illegal situation may be detained for successive periods of 48 hours on the authority of an immigration official, for as long as is necessary in order to determine his status. However, after the first 48 hours of detention the detainee must be informed in writing of the reasons for his continued incarceration. In practice, people are detained without any written explanation for often very long periods (there is no maximum detention period in law, neither before determination of the immigrant's status nor afterwards, and particularly while awaiting repatriation). Although, the law does provide for

---

7/ Only 11 000 people have applied to date (an insignificant figure compared with the number of illegal persons in the country), according to H. Kotze and L. Hill, "Emergent migration policy in a democratic South Africa", in International Migration, Vol. 35, No 1, 1997.

8/ Certain immigrants (or citizens) "typed", or identifiable by their clothing, the languages they speak (Mozambicans, Zimbabweans, Nigerians, etc.) are apparently subjected to more frequent checks than others. A foreigner is any person who does not speak Zulu or who has vaccination scars high on the arm, vaccinations in South Africa being given lower down the arm.

the possibility of an appeal by the immigrant (i.e. the chance to present his case before the competent authorities) before repatriation takes place, this right is apparently never respected.

61. In addition, the conditions of confinement or detention are often difficult (police cells in particular are not suited to long periods of detention). Reports mention the poor food, the sharing of cells with people who have committed criminal acts, and harsh treatment by police officers (made all the more easy by the fact that the illegal persons' status makes it more difficult for them to gain access to official legal channels), all of which has apparently led to the death of a number of immigrants while in detention.

62. Recently, efforts have been made to improve the conditions of detention, at an experimental transit centre called Lindela, at Dyambu Youth Centre. The centre, which was visited by the Special Rapporteur, is some 100 kilometres from Johannesburg. It is managed by a private company, the Dyambu Trust, which has undertaken to convert huts formerly used by black South African miners into a detention centre for immigrants without papers. The company provides the detainees with accommodation, food and care. Eighteen officials of the Ministry of the Interior supervise the centre and carry out the formalities involved in admission, release and repatriation. The detainees can receive visitors, and have access to a telephone; also at their disposal is a large courtyard surrounded by high walls and guarded on the outside by specially trained dogs.

63. The centre houses a thousand people, 24 to a room. There are 48 men's toilets and 3 for 20 women. When the Special Rapporteur visited on 3 March 1998, the centre had just taken in 46 illegal immigrants including an Egyptian, an Indian and 46 Mozambicans. At that time the centre housed some 20 women. The illegal immigrants who arrive at the centre come from all parts of the country. They stay 5 days on average, the time it takes to organize their repatriation. Repatriation is done by train to bordering countries and by air to more distant countries. The detention period may take longer than a week if a migrant without papers refuses to give his nationality or the authorities in his country do not cooperate in his repatriation. The Special Rapporteur noted that only detainees from black Africa were present at the centre (mainly from Mozambique and Zimbabwe) and saw no Egyptian, Indian or European, contrary to what he had been told.

64. Other than the name of the company that runs it, which carries with it the illusory promise of a better future ("Dyambu" means rising sun in Venda), the Lindela centre does provide adequate facilities for the transit of people who appear to be relatively well treated. The managing company's contract expired in April 1998 and is being renewed. The company is planning to build a second transit centre to accommodate around 1000 people, which is an indication of the increasingly restrictive nature of South African policy on migrants.

65. Apart from the violence sometimes associated with the arrest and detention of illegal immigrants, it seems that the police are not always keen to assist in protecting immigrants against attacks from sections of the population (as illegal persons find access to legal channels difficult, police negligence is easily overlooked). Testimony from other sources has described the corruption that exists among the police officers and officials responsible for immigration

control (the sale of identity papers, the theft of goods belonging to repatriated illegal persons).

66. Another indication of the climate of violence towards immigrants is the fact that the SANDF is involved in the campaign against illegal immigration, and constantly calls for tougher measures to reduce the influx of illegal persons (border patrols are not sufficient), particularly the extension and reconnection in "fatal" mode (33 000 volts) of the electrified fence along the northern border.

C. A xenophobia towards Blacks

67. Research shows that since the 1994 elections xenophobia towards immigrants, particularly Africans, has increased steadily among the population, both Black and White 9/. It is evident in the common tongue, where the contemptuous terms "amakwerewere", "amagrigamba" and "amagongogo" (wogs) are used to designate foreigners 10/, and in the press, which holds illegal immigrants responsible for all the troubles of South African society (criminality, drugs, etc.). The " invasion by immigrants " syndrome well known in Europe and America can be found in South Africa, where it feeds into every fear, appearing as "Swart gevart" (the black peril, in Afrikaans) in the section of the press which still clings to the old ideas about Africans. In addition, the South African police encourage an atmosphere of manhunt and incrimination. Xenophobia is particularly prevalent in Gauteng (especially in Johannesburg, whose Hill Brow district is entirely occupied by foreigners of all nationalities), Mpumalanga and Cape provinces.

68. Foreigners suspected either rightly or wrongly of being illegal persons have been the victims of attacks, as in Alexandra township, near Johannesburg, in December 1994 and January 1995. For several weeks, gangs of South Africans fought violently to expel "illegal persons" accused of crimes, sex attacks, being unemployed and all kinds of social misdemeanours. That campaign, called "*Buyelekhaya*" (go home) was reportedly led by members of the ANC, the *South African Communist Party*, the *South African National Civic Organization*, the *Concerned Residents Group of Alexandra* and the *Alexandra Property Owners Association* 11/. The main targets of operation "Buyelekhaya" were

---

9/ See Human Rights Watch, "Prohibited persons". Abuse of undocumented migrants, asylum seekers and refugees in South Africa, New York, London, March 1998, 236 p. A survey in October 1995 by the Centre for Socio-political Analysis of the Human Sciences Research Council shows that 68 % of South Africans are in favour of a more radical policy on illegal immigrants, which indicates growing negative feelings towards prohibited persons since the 1994 elections in all linguistic groups. Moreover, 55% of those who support a stricter policy on illegal persons state that the reason for their position is that the former are taking jobs from them and are responsible for South Africa's growing crime rate.

10/ These terms are used especially in the province of Gauteng, South Africa's largest urban area, which contains Johannesburg; "amagongogo" refers particularly to people from West Africa.

11/ Human Rights Watch, Prohibited Persons, op. Cit., p. 135.

Mozambicans, Malawites and Zimbabweans, some of whom were long-term residents of South Africa.

69. Other victims of popular xenophobia are foreign street hawkers (Chinese, Indians, Mozambicans, Nigerians, Senegalese, Somalis, Zimbabweans), against whom corporate organizations and others such as Micro Business against Crime, the Illegal Foreigners Action Group, the African Chamber of Hawkers and Independent Business and the Greater Johannesburg Hawkers Association issue threats and encourage boycotts and aggression. Some members of these organizations have taken action: in August 1997 in Johannesburg, South African street hawkers attacked their foreign counterparts, among whom were several Senegalese traders, beating them and destroying their stalls and goods while the crowd chanted "Phansi makwerewere" ("down with the foreigners").

70. One of the causes of this wave of xenophobia is the fact that under the apartheid regime, South Africa was cut off from the rest of the African continent and regarded itself as an outpost of Europe and its culture. Africans were depicted as savages and accomplices of the UN, which was held responsible for the economic sanctions imposed on the apartheid regime. The solidarity that Africans showed regarding the oppressed peoples of South Africa was little known to the majority of South Africans, kept unaware by the apartheid regime. Former South African refugees who have returned home after exile are alone in displaying tolerance and openness to the nationals of other African countries which welcomed them and supported their struggle against apartheid. After President Nelson Mandela came to power, it took the African Nations Football Cup in 1996 to make South Africans aware, via their television screens, of the other peoples and nations on their continent. The Special Rapporteur's mission took place during the 1998 African Nations Cup, an event which further familiarized South Africans with the other African peoples.

71. Another reason behind this attitude is the desire to prevent foreigners benefiting from the huge programme of redistribution of economic resources being implemented by the government. The fact is that the population, which can hardly accuse the government of not representing its interests, attributes all society's problems to the foreigners: unemployment, the increase in criminality, etc. The immigrants are accused of "taking" work intended for South Africans, of eroding union standards by accepting very low wages and deplorable working conditions, of benefiting from social services without contributing to them, and thus of undermining the government's reconstruction and development programme.

72. However, just as the statistics produced on numbers of illegal immigrants are not reliable, neither is the estimated cost of illegal immigration into South Africa 12/. The influence of illegal persons on the economy of the country must be evaluated by taking account of the following factors:

12/ The remarks of the Minister of the Interior, Mr. Buthelezi, that "illegal foreigners would cost the government R221 million [in 1995] and that the cost could reach R 1 billion in six years... The implications of these kinds of figures for the Reconstruction and Development Programme are quite awesome" have yet to be borne out.

(a) The majority have set up on their own account (trade, crafts) and are therefore not taking work from unemployed South Africans (estimated at 33 % of the active population), a situation only emphasized by the fact that they are concentrated in the unofficial sector of the economy. On the other hand, they are sometimes instrumental in job creation and the transmission of qualifications;

(b) Also, the fact that they are active in the official economy (agriculture, the construction industry) and work for low wages is less their fault than their employers', who regard them as easily exploitable 13/. Paradoxically, it is their status as illegal persons which provides employers with the opportunity to bypass the labour laws;

(c) They rarely make use of social services (health and education) for fear of being discovered and repatriated.

73. The widespread belief that illegal persons merely consume South Africa's socio-economic resources without producing any does not always stand up (they consume goods on which they pay VAT); it is their illegal status which prevents them from paying full contributions for public services (through income tax).

74. With regard to the supposedly high level of criminality among illegal persons, this is not reliable, as the fact that some clandestine foreigners have been arrested for criminal acts does not mean that all illegal persons are criminals. Consequently, the argument often put forward by the police that the measures to combat criminality should involve a "hunt" for clandestine foreigners persons must be treated with caution, even though it conforms with public opinion.

75. When finalizing his report, the Special Rapporteur was informed that on 3 September 1998, two Senegalese and one Mozambican were killed while trying to escape from a crowd of unemployed South Africans, who had threatened to kill them and accused them of "taking work from South Africans." The incident occurred on a train from Pretoria to Johannesburg. Two of the victims were electrocuted trying to escape through the roof of the train and the other fell onto the track. The Special Rapporteur informed the South African Government of the incident for its comments.

76. This growing xenophobia can also be found among political leaders in South Africa 14/, and can be explained by two factors:

13/ Some disgraceful practices by unscrupulous employers have been exposed: they sometimes employ illegal foreigners for a certain period, report them to the police so that they do not have to pay them, and then recruit a new group of fresher illegal foreigners!

14/ A study carried out by the Centre for International and Comparative Politics at Stellenbosch University (Kotze, H., "Illegal aliens-South Africa first" say decision makers) shows that a majority among the elites in most sectors of South African society support stricter measures on illegal immigrants. With the exception of the ANC, a majority among the elites of all parties agree on the fact that "it is not our duty to take in refugees from

(a) These leaders are echoing their electorate, which also gives them the opportunity to find a scapegoat for the consequences of the difficulties they are experiencing in finding an immediate solution to the country's socio-economic problems;

(b) The negotiations in the context of the transition to democracy. Responsibility for immigration rests mainly with two ministries, the *Home Affairs Department* (in the hands of the Inkhata Freedom Party) and the *Foreign Affairs Department* (which answers to the ANC). Before coming to power, many leading figures in the ANC owed their salvation to exile as the only alternative to imprisonment. Some of the party's leaders therefore now adopt a more relaxed policy towards illegal immigrants and do not hide their opposition to the treatment currently being meted out to foreigners. However, because of the numerous matters of national importance which attracted bitter debate during the constitutional negotiations (the ANC and the IFP clashed with particular fervour on the subject of regionalism), other matters considered to be of less immediate importance, such as immigration, have been sidelined somewhat as part of a "soft" consensus, in order to avoid further conflicts (this is why the ANC has not adopted a radical stance in the face of much of the IFP's policy under the iron fist of the Interior Minister, Mr Mangosuthu Buthelezi).

77. On the whole, it would seem that recognition of immigrants' rights is currently regarded, by both public opinion and certain politicians, as a luxury that cannot be afforded by a country of limited resources which also has urgent social problems emanating from the long years of oppression.

IV. MEASURES TAKEN BY THE GOVERNMENT

78. The government has set up a working group on international migration to discuss the problems relating to immigration into South Africa and find solutions. On 13 May 1997, the working group submitted its report to the Ministry of the Interior (*Draft Green Paper on International Migration*), in which it noted in particular that "the design and implementation of immigration policy must (...) be faithful to the new Constitution and the Bill of Rights. It must also be consistent with our commitment to upholding universal human rights, administrative justice and certain basic rights for all people who are affected by the South African State".

79. The working group maintains that "the challenge for South Africa is to transform a racially-motivated immigration/migration system into a non-racial and rational policy responsive to the objective needs of the country". It has rightly pointed out that, apart from political rights like the right to vote or certain economic rights like the right to practise a trade, occupation or profession, all other rights guaranteed by the South African Constitution and Bill of Rights apply equally to any person living in South Africa, and not exclusively to its citizens. Consequently, the basic rights of migrants without identity papers must be respected.

Africa." Moreover, all parties (including the ANC) support the idea that "South Africa should not relax its laws dealing with immigration by persons from southern Africa."

80. From 13 to 15 June 1997 the Ministry of Justice, in cooperation with Western Cape University and UNHCR, held an international conference on xenophobia which highlighted the problems facing South African society in its relations with foreigners. The Minister of Justice used the occasion to put forward a series of proposals -concerning research into the causes of xenophobia, legislation, education and information- intended to strengthen the fight against racism and xenophobia:

(a) With regard to the laws against discrimination, the Minister stated that it was "critical that refugees be specifically regulated under domestic law rather than treated as ordinary aliens", and that, whilst general discrimination was largely addressed, particular forms of discrimination should be rendered unlawful - i.e. racist and xenophobic offences as well as discrimination in employment and the supply of goods and services;

(b) With regard to education and information, the Minister emphasized that they could be used to intensify the fight against racism and xenophobia. "School curricula should be targeted in the field of history and research should be promoted into the nature, causes and manifestations of racism and xenophobia at local, national and regional levels. Training courses should be set up to promote cultural sensitivity, awareness of prejudice and knowledge of legal aspects of discrimination, for those responsible for recruitment and promotion procedure, and for those who have direct contact with the public or are responsible for ensuring that the persons in the organization comply with standards and policies of non-discrimination and equal opportunity. Finally, there should be mechanisms and instruments for independent inquiry into incidents and areas of conflict."

Proposals of this nature should help to establish a new human rights culture in South Africa that will be conducive to better treatment for foreigners.

V. ACTION BY CIVIL SOCIETY

81. Civil society is beginning a new conversion process, in order to progress from a strategy of combating apartheid and preparing for the arrival of democracy to adopting the vital role of watching over the government and taking action for the instilment of human rights in South African society. Nevertheless, organizations in civil society still pay insufficient heed to the human rights of foreigners. The church representatives whom the Special Rapporteur met acknowledged the need to extend a welcome to the nationals of other African countries. Owing to lack of resources, the churches are unable to launch anti-xenophobia awareness campaigns, external sources of funding having dried up since the end of apartheid. Moreover, they feel that the more urgent need is to improve the living conditions of South Africans.

82. Organizations such as the Institute for Democracy in South Africa (IDASA) provide a continuing forum for ideas from which emerge programmes aimed at developing democratic awareness among the South African population. IDASA also runs a critical eye over the government's administrative activities, and is not slow to submit proposals for improving its economic and social policy.

83. At Cape Town University, an intergovernmental organization is working on multilingualism: "Project Studies Alternative Education". This programme is concerned with education in the national languages. It is structured around the eleven official languages (see para. 35) including English and Afrikaans. According to the representative who spoke to the Special Rapporteur, the programme owes its genesis to the ackowledgement that the institutions of State are not used to multilingualism; that White majority institutions do not speak or use African languages; that English, Afrikaans and Xhosa predominate; and that the media do not use African languages, with the exception of the TV and radio programmes broadcast in Xhosa and Zulu. This is a pilot project, still at the experimental stage, which is concerned with education and the elimination of illiteracy for as many people as possible.

84. Some NGOs are working to strengthen communities' capacities to organize and their resources for influencing governmental or regional policy. Such is the case with the Provincial Parliamentary Programme (PPP), a joint initiative of IDASA, the Institute for Multi-Party Democracy(IMPD), Black Sash and Lawyers for Human Rights (LHR) in the province of KwaZulu Natal. The aim is to operate in the provincial parliament with a view to making the parliamentary process more transparent, effective and reflective of the population's interests. The Programme is also mounting a campaign to have the provincial parliament set up a local body concerned with human rights protection. Projects on political and legal training for members of other NGOs and basic community organizations and the dissemination of information through various publications are basic components of this organization's programme of action.

85. Finally, other NGOs such as the Community Dispute Resolution Trust (CDRT) are tackling the task of resolving the disputes which divide communities and individuals within communities, as well as political organizations, through dialogue, mediation and conciliation. It should not be forgotten that in KwaZulu Natal there were violent clashes between members of the ANC and Inkatha during the transition to democracy. The CDRT tries to bring members of both parties to the table and to help them resolve their disputes by non-violent means.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

86. South African society is changing rapidly. The complex socio-economic situation is characterized on the one hand by opposition to the changes from many among the White minority which holds economic power, and on the other by a rising tide of xenophobia, particularly towards Blacks from other regions of the African continent.

87. From the reform standpoint, South Africa is a vast blueprint for legislation intended to fully democratise society. The political intent of its leaders can be seen in the establishment of institutions inspired by pluralist liberal democracy and by the human rights principles proclaimed and furthered by the UN. But the socio-political burdens, the persistence of an apartheid culture which cannot be transformed quickly, limited financial resources and still inadequate human resources constitute a considerable hindrance, not to mention the need to take account of the time factor, with South Africans impatient to

taste the fruits of freedom even though the quiet revolution under way dates back only to 1994.

88. Long-term political resolve and education are necessary in order to ensure respect for human rights and success in the struggle against racism, racial discrimination and xenophobia. The South African people, by vanquishing apartheid, have proved they can succeed; we must now keep faith with them and help them to measure up to the dangers constantly being presented in different and subtle forms by racism, racial discrimination and xenophobia.

89. Whatever their status (legal or not) in the country where they live immigrants, by virtue of belonging to the human race, have certain rights such as those set forth in the International Bill of Human Rights (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights), and the Declaration on the Human Rights of Persons whose nationality is not that of the country where they live. Thus, the fact that a person has entered a territory illegally does not affect the rights to which he is entitled by virtue of those documents (signed by South Africa, although it has not ratified them): the right to life, to safety, to well-being, to equality before the law, and to detention which complies with the rules laid down by international and national standards.

B. Recommendations

90. The Special Rapporteur therefore makes the following recommendations:

1. To maintain the reconciliation process by continuing to encourage the commitment of those on the margins who refuse to take part;

2. To broadcast and teach the Constitution and human rights in all schools and through the mass media; to conduct a parallel campaign of civic education among the population with the aim of combating xenophobia and encouraging greater tolerance, in view of the increase and frequency of the xenophobia directed towards Blacks from other regions of Africa. In particular, immigration officials (police officers, civil servants) should receive instruction in human rights.

3. To adopt new immigration law which breaks away from the legacy of apartheid. Above and beyond basic compliance with the regulations provided for by law, the procedure should be improved, particularly with regard to the length of detention prior to repatriation (a time limit should be set for this, which is not the case at the moment). Detainees should have the right of appeal, to obtain legal representation (lawyer) and to have an interpreter provided by the State during official questioning; lastly, those detained while awaiting repatriation should be kept in detention centres other than those reserved for criminals, which is not always the case (particularly when they are kept for long periods in police cells).

4. Given the porous nature of the frontiers, the repatriation of illegal persons to their own countries is clearly an ineffective

means of dealing with illegal immigration (in 1994, only 90 000 illegal persons were repatriated out of the 2 million alleged illegal persons living on South African territory). The measure is purely a short-term one which takes no account of regional economic disturbances, economic factors being the main cause of immigration into South Africa - a situation all the more emphasized by the fact that Cold War conflicts have been settled in this area of Africa, with a resulting drop in the numbers of refugees 15/. South Africa should broaden its definition of the term refugee to include those immigrants from the SADC who are fleeing from economic instability in their countries caused in part by the destabilisation policy conducted by the South African Government in the sub-region (Zimbabwe, Mozambique, Angola) during the 1970s and 1980s. In broader terms, it must promote the concept that, in the long term, regional integration which includes free circulation of people and the harmonisation of socio-economic policy among the SADC member states is the only viable strategy for resolving the problems of migration to and from those countries, and not the current thinking which consists in saying that neighbours must seek to develop within their own borders and stop the emigration to South Africa.

5. To entrust the task of formulating coherent immigration policy to a special department which would take responsibility for matters relating to citizenship, naturalisation and immigration itself, so as to avoid the repressive influence brought to bear by the Ministry of the Interior on immigration matters;

6. To ratify the International Convention on the Elimination of All Forms of Racial Discrimination and adopt a law against racism and racial discrimination in line with the pamphlet entitled *Model National Legislation for the guidance of Governments in the Enactment of Further Legislation against Racial Discrimination* (a United Nations publication, No. HR/PUB/96/2) which has been transmitted to the government.

7. To pursue integration in the armed forces through more balanced representation of the different ethnic and racial groups, and to strengthen the civic education initiated in the armed forces.

8. To extend the teaching of civic education to all stages of school, university and professional training.

9. To facilitate and encourage the revival of the civil society which played an active and decisive role in the struggle against apartheid, but which now sees itself as abandoned and discarded;

10. To make Africa, and African countries, civilisations and cultures, more widely known by means of television programmes, research and

---

15/ See in paragraph 53 the failure of the efforts to repatriate 120 000 Mozambican refugees.

publications, so that South Africans come to appreciate better their place as a part of that continent.

Annex

PROGRAMME OF THE MISSION

(25 February-4 March 1998)

During his visit to South Africa the Special Rapporteur met the following persons:

Cape Town
(25-27 February 1998)

Mr Dullah Omar, Minister of Justice, and Dr Manto Tshabala-Msimang, Deputy Minister of Justice

Mr F.S. Mufamadi, Minister of Safety and Security

Mr Zackie Achmat, President, National Coalition for Gay and Lesbian Equality

Mr Peter Pluddemann, Deputy Director, and Mr Xola Mati, Research Officer, Project Studies Alternative Education

Ms Christina Muray, Director, and Mr Francois Botha, Professor, Law, Race and Gender Division, University of Cape Town

Mr Vincent William, Manager of Southern African Migrants Project, and Ms Gitanjali Maharaj, Manager of Transformation and Equity Project, Institute for Democracy in South Africa

Mr Wilmot James, Executive Director, Institute for Democracy in South Africa

Johannesburg and Pretoria
(2-4 March 1998)

United Nations Country Team members: Mrs Scolastica Kimairo (UNICEF), Dr Yobert Shamapande (UNIC), Mr Dan Temu (UNDP), Mrs Enderson (UNAIDS)

Mr Josiah D. N. Ogina, Head of Mission for South Africa, International Organization for Migration; Mr Mendesha Kebede, Deputy Regional Director, and Mr Yusuf Hassan, Senior Regional External Relations Officer, UNHCR

Major General Jackie Sedibe (Ms), Director Equal Opportunity; Brigadier Martin Rutsch, Director Personnel Development; Brigadier John Lizamore, Director Research and Training, South African Defense Force

Mrs Venitia Govender and Mr Makubetse Sekhonyne, Human Rights Committee

Mr Adu Selby Baqwa, Public Prosecutor

Ms Zelda Holtzman, Head Equity Component; Ms Vanessa Gounden, Senior Superintendent; Mr Peter Cronje, in charge of Human Rights Education, South

African Police Service; Mr Amichand Soman, Director, Secretariat for Safety and Security

Mr Abdul S. Minty, Deputy Director General for Multilateral Affairs, and Dr Sharpe, Chief Director Social Affairs, Department of Foreign Affairs

Ms Faith Pansy Tlakula, Mr Jerry Nkeli, Mr Mogan Moodliar, Mr Lindelwa Ntutela, Mr Tseliso Thipungane, and Ms Jody Kollapen, Commissioners, South African Human Rights Commission

Judge A. Chaskalson, President, and Judge Pius Langa, Member, Constitutional Court

Ms Myriam Dooms, Mayor; Mr Philip du Plooy, Director, Governing Service; Mr Reeves M. Mabitsi, Member of the Executive Committee; Mr Pasty Malefo, Member of the Executive Committee, City Council of Pretoria

Mrs Charity Majiza, General Secretary; Rev Abraham Aja, Deputy Secretary-General; Mr Gary Thompson, responsible for Capacity Building; Ms Esther Matame, responsible for Human Rights Programme; Mr Lehlohonolo Bookholane, responsible for Faith and Mission, South African Council of Churches

Mr Isaac Mogase, Mayor of Greater Johannesburg

Durban
(4 March)

Ms Bess Pillerne, Coordinator, Lawyers for Human Rights; Ms Lunga Khumalo, Community Dispute Regional Organizer, Community Dispute Resolution Trust; Mr Mawethu Mosery, Centre for Socio-Legal Studies; Ms Belinda Darlerbe, Administrator, and Ms Penny Dlamini, Advocacy Support Coordinator, Provincial Parliamentary Programme

Mr Obed Mlaba, Mayor of Durban